



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

May 15, 2003

Ms. Susan C. Rocha  
Denton, Navarro, Rocha & Bernal  
1700 Tower Life Building  
310 South St. Mary's Street  
San Antonio, Texas 78205-3111

OR2003-3287

Dear Ms. Rocha:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 181272.

The City of Castroville (the "city"), which you represent, received two requests from the same requestor for employment information related to two named individuals, including employment applications and exams. You state that the requestor subsequently clarified his initial requests and made an additional request for information regarding certain communications related to a specified complaint. *See* Gov't Code § 552.222 (providing that if request for information is unclear, governmental body may ask requestor to clarify request); *see also* Open Records Decision No. 31 (1974) (stating that when governmental bodies are presented with broad requests for information rather than for specific records, governmental body may advise requestor of types of information available so that request may be properly narrowed). You claim that portions of the requested information are excepted from disclosure under sections 552.101, 552.119, 552.122, 552.130, and 552.1175 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, we note that in a subsequent letter to this office, you state that you have decided to withdraw your request for an opinion regarding the third request for information because the city does not have information responsive that request. We note that the Public Information Act (the "Act") does not require the city to disclose information that did not exist at the time the request was received. *Economic Opportunities Dev. Corp. v. Bustamante*, 562 S.W.2d 266 (Tex. Civ. App.--San Antonio 1978, writ dismissed); Open Records Decision No. 452 at 3

(1986). Additionally, in regard to the remaining two requests for information, we note that the Act does not require the city to answer factual questions, perform legal research, or create new information in responding to a request. *See* Open Records Decision Nos. 605 at 2 (1992), 563 at 8 (1990), 555 at 1-2 (1990), 534 at 2-3 (1989); *see also AT&T Consultants, Inc. v. Sharp*, 904 S.W.2d 668, 676 (Tex.1995); *Fish v. Dallas Indep. Sch. Dist.*, 31 S.W.3d 678, 681(Tex. App.–Eastland, pet. denied). However, a governmental body must make a good faith attempt to relate a request to information it holds. *See* Open Records Decision No. 561 at 8 (1990).

In regard to the submitted information, criminal history record information (“CHRI”) generated by the National Crime Information Center (“NCIC”) or by the Texas Crime Information Center (“TCIC”) is confidential. Title 28, part 20 of the Code of Federal Regulations governs the release of CHRI that states obtain from the federal government or other states. Open Records Decision No. 565 (1990). The federal regulations allow each state to follow its individual law with respect to CHRI it generates. *Id.* Section 411.083 of the Government Code deems confidential CHRI that the Department of Public Safety (“DPS”) maintains, except that the DPS may disseminate this information as provided in chapter 411, subchapter F of the Government Code. *See* Gov’t Code § 411.083.

Sections 411.083(b)(1) and 411.089(a) authorize a criminal justice agency to obtain CHRI; however, a criminal justice agency may not release CHRI except to another criminal justice agency for a criminal justice purpose. *Id.* § 411.089(b)(1). Other entities specified in chapter 411 of the Government Code are entitled to obtain CHRI from DPS or another criminal justice agency; however, those entities may not release CHRI except as provided by chapter 411. *See generally id.* §§ 411.090 - .127. Thus, any CHRI generated by the federal government or another state may not be made available to the requestor except in accordance with federal regulations. *See* Open Records Decision No. 565 (1990). Furthermore, any CHRI obtained from DPS or any other criminal justice agency must be withheld under section 552.101 of the Government Code<sup>1</sup> in conjunction with Government Code chapter 411, subchapter F. However, the definition of criminal history information does not include driving record information. Gov’t Code § 411.082(2)(B). Consequently, although you must withhold any CHRI obtained from TCIC and NCIC, the city must release any driving record information.

Section 552.117(2) of the Government Code excepts from disclosure “information that relates to the home address, home telephone number, or social security number” of a peace officer, or that reveals whether the peace officer has family members. Therefore, we agree that you must withhold most of the information you highlighted, as well as the additional

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<sup>1</sup>Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.”

information we have marked, under section 552.117(2) of the Government Code.<sup>2</sup> We have also marked the highlighted information to which section 552.117 is inapplicable. This information must be released.

Section 552.122(b) of the Government Code excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122 includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Whether information falls within the section 552.122 exception must be determined on a case-by-case basis. Open Records Decision No. 626 at 6 (1994). Traditionally, this office has applied section 552.122 where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Additionally, when answers to test questions might reveal the questions themselves, the answers may be withheld under section 552.122(b). *See* Open Records Decision No. 626 at 8 (1994).

You contend that the submitted entrance examinations are excepted from disclosure under section 552.122(b). You state that the examinations are administered "to evaluate an individual's knowledge in a particular area" and that "these test items for the [city] have been, and will continue to be used on subsequent examinations." Having considered your arguments and reviewed the submitted examinations, we agree that the examinations constitute "test items" as contemplated by section 552.122(b). We also find that the preferred and actual responses to these examinations may reveal the questions themselves. Accordingly, the city may withhold the entrance examinations you have marked, and their respective preferred and actual answers pursuant to section 552.122(b) of the Government Code.

Finally, section 552.130 of the Government Code prohibits the release of information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. *See* Gov't Code § 552.130. Accordingly, the city must withhold the Texas driver's license information we have marked pursuant to section 552.130 of the Government Code.<sup>3</sup>

In summary, we conclude that: 1) except for driving record information, you must withhold any CHRI obtained from TCIC and NCIC; 2) you must withhold the home address, home telephone number, social security number and family member information of a peace officer under section 552.117 of the Government Code; 3) you may withhold the submitted entrance

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<sup>2</sup>As we are able to make this determination, we need not address your argument under section 552.1175 of the Government Code.

<sup>3</sup>As we are able to make this determination, we need not address your arguments under section 552.119 of the Government Code or section 730.003 of the Transportation Code.

examinations in their entirety under section 552.122 of the Government Code; and 4) you must withhold the Texas driver's license information we have marked pursuant to section 552.130 of the Government Code. All remaining responsive information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



W. Montgomery Meitler  
Assistant Attorney General  
Open Records Division

WMM/lmt

Ref: ID# 181272

Enc: Submitted documents

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